Zedtee Sdn Bhd v Maduraya Sdn Bhd

HIGH COURT (MIRI) — CIVIL APPEAL NO 12-13 OF 2002 (MR)
ABDUL AZIZ JC
16 MARCH 2004

Contract — Liability — Independent contractor — Whether defendant responsible for act of independent contractor

Contract — Terms — Construction — Independent contractor or servant — Relationship of parties under contract — Whether determined by label given to document — Whether by looking at effect of contract

Tort — Trespass to land — Damages — Plaintiff appointed to extract timber by main contractor — Defendant's contractor stole timber logs — Whether plaintiff had right to sue defendant

Tort — Trespass to land — Damages — Tortious act of defendant's independent contractor — Whether defendant exercised care in selecting competent contractor — Whether defendant's duty of care delegable — Whether defendant liable

Under a timber extraction agreement made between a company ('Shin Yang') and the plaintiff, the plaintiff was employed as an independent contractor to extract timber in an area known as licensed area T/0139. Shin Yang was appointed as the main contractor to extract timber pursuant to a timber licence granted by the Sarawak Timber Industry Development Corporation. By a logging agreement made between the defendant and Bawan Sdn Bhd ('Bawan'), the defendant appointed Bawan to extract timber in another area, known as licensed area T/4214. The logging agreement provided, amongst other things, that Bawan shall be regarded as an independent contractor and that it shall be responsible, at its own cost and expense, to supply all labour and materials for the performance of its obligation under the logging agreement. In return for Bawan's obligations under the logging agreement, Bawan was paid a sum of money based on the quantity of merchantable timber logs felled, extracted and delivered to destinations specified by the defendant from time to time.

The plaintiff alleged that the defendant had extracted and stole 619 logs from the licensed area T/0139. The plaintiff commenced an action in the sessions court against the defendant to recover a sum of RM193,355.20 with interest as compensation for the loss of the logs. The plaintiff's claim was dismissed by the sessions court, hence the instant appeal.

The issues to be determined in this appeal were whether: (a) the defendant was liable for the act of Bawan; and (b) the plaintiff had the right to sue the defendant. At the sessions court, evidence was adduced to show that Bawan had cut the logs illegally from the licensed area T/0139.

Held, dismissing the plaintiff's appeal:

(1) The question of whether the plaintiff had the capacity or right to sue for the loss of the logs may be determined within the four corners of

the timber extraction agreement. Under this agreement, if there was any loss of timber logs, the plaintiff would be responsible for it and would have to compensate Shin Yang for the loss. Any loss of the timber logs from the licensed area would certainly affect the plaintiff. This factor was the single most important factor for holding that the plaintiff ought to be allowed to take all reasonable steps to prevent the loss of the timber logs or to recover the loss from whomsoever caused it, including mounting a legal action in a court of competent jurisdiction to recover the loss. In short, the plaintiff had an interest – a pecuniary interest - in the timber extraction agreement and this interest gave the plaintiff the locus standi to sue (see paras 19 and 21).

(2) The relationship of the parties under a contract was not determined by the label given to the document of contract, but by looking at the effect of the provisions of the contract. Under the logging agreement, the defendant may have the authority to direct Bawan as to what needed to be done, namely, the cutting and extraction of merchantable timber logs from the licensed area T/4212 and to deliver them to a point of collection as specified by the defendant. However, the defendant had no control over the labour or the machinery or the manner to be employed by Bawan in carrying out that task. The test to determine whether a person is an independent contractor or a servant is the degree of control the employer had over the person. The true relationship between the defendant and Bawan must be determined by looking at the total effect of all the provisions in the contract that governed the relationship. Taking this approach, and applying the control test, the provisions of the logging agreement showed that the relationship between the defendant and Bawan was that of an independent contractor (see paras 7 and 10).

(3) Since Bawan was an independent contractor, the defendant was not responsible for its act in encroaching into the plaintiff's licensed area and illegally felling and extracting timber logs therefrom (see para 10).

(4) The plaintiff had grounded its claim for loss and damages against the defendant on the tort of trespass and conversion. As for the question of whether the defendant can be liable for the tortious act of its independent contractor, the principle of law is that that an employer is not liable for the default or negligence of its independent contractor subject to certain exceptions, namely, where an employer did not exercise care in selecting a competent contractor and where the duty to take care on the part of the employer was 'non-delegable'. In the instant appeal, none of the two exceptions were applicable (see paras 11 and 12).

(5) In any case, even if Bawan were the agent of the defendant, the defendant cannot be made liable for Bawan's act because the logging agreement clearly provided that Bawan was to fell and extract timber from the area under licence T/4214 only. Thus, Bawan's act was obviously outside the scope of its employment and the defendant cannot be made liable for Bawan's act, which was done outside the scope of its employment (see para 14).

[**Bahasa Malaysia summary**

Di bawah perjanjian pembalakan di antara syarikat (Shin Yang) dan plaintif, plaintif telah diupah sebagai kontraktor bebas untuk membalak dari kawasan yang dikenali sebagai T/0139. Shin Yang telah dilantik sebagai kontraktor utama untuk membalak mengikut satu perjanjian pembalakan yang telah diberi oleh Sarawak Timber Industry Corporation. Mengikut perjanjian pembalakan yang dibuat antara defendan dan Bawan Sdn Bhd (Bawan) defendan telah melantik Bawan untuk membalak di kawasan yang dikenali sebagai T/4214. Antara terma perjanjian ini adalah bahawa Bawan diiktiraf sebagai kontraktor bebas dan akan menyediakan pekerja dan alatan untuk melakukan kerja pembalakan dari perbelanjaannya sendiri. Dan sebagai balasan Bawan akan dibayar sejumlah wang menurut kuantiti balak yang diproses ke destinasi yang dispesifikasikan oleh defendan.

Plaintif mendakwa bahawa defendan telah membalak dan mencuri sebanyak 619 batang balak dari kawasan T/0139. Plaintif telah memulakan satu tindakan dalam mahkamah seksyen untuk mendapatkan semula jumlah wang sebanyak RM193,355.20 termasuk faedah sebagai pampasan kehilangan balak. Permohonan plaintif ditolak dengan kos.

Isu-isu yang diambil kira di sini termasuk sama ada: (a) defendan memang bersalah atas tindakan Bawan; (b) sama ada plaintif berhak menyaman defendan. Di mahkamah seksyen, bukti menunjukkan bahawa Bawan telah membalak secara haram dari kawasan T/0139.

Diputuskan, menolak rayuan plaintiff:

(1) Soalan sama ada plaintiff mempunyai keupayan menyaman atas kehilangan balak dapat dipastikan setelah meneliti empat penjuru perjanjian tersebut. Di bawah perjanjian ini, jika terdapat kehilangan balak, plaintiff akan bertanggungjawab dan akan membayar pampasan kepada Shin Yang atas kerugiannya. Sebarang kerugian dalam kawasan yang dilesenkan akan membawa kerugian kepada plaintif. Oleh sebab ini adalah wajar jika pihak plaintif mengambil segala tindakan untuk mengelakkan kejadian kehilangan balak dari berlaku, tindakan yang dimaksudkan di sini termasuklah tindakan undang-undang di mahkamah yang mempunyai bidang kuasa kompetan (lihat perenggan 19 dan 21).

(2) Perhubungan kesemua pihak yang menandatangani perjanjian tersebut tidak ditentukan oleh label yang diberi dalam kontrak tetapi kesan terma perjanjian tersebut. Dalam perjanjian yang dibuat, defendan mungkin mempunyai kuasa untuk mengarahkan Bawan atas tugasan seperti membalak di kawasan yang ditetapkan iaitu T/142 dan menghantar balak tersebut ke tempat kutipan yang ditetapkan. Walaubagaimanapun, defendan tidak berupaya mengawal kuasa pekerja atau mesin yang digunakan untuk pembalakan yang digunakan oleh Bawan untuk menjalankan tugasannya. Perhubungan sebenar di antara defendan dan Bawan mestilah ditentukan dengan melihat kepada kesan keseluruhan semua peruntukan di dalam kontrak perhubungan itu. Dengan menggunakan kaedah ini dan mengguna pakai kes ujian ini, kesimpulan yang dapat diambil diantara hubungan Bawan dan defendan adalah Bawan sebagai kontraktor bebas (lihat perenggan 7 dan 10).

(3) Oleh kerana Bawan merupakan kontraktor bebas, defendan tidak bertanggungjawab di atas perbuatannya mencerobohi kawasan berlesen plaintif dan membalak secara haram (lihat perenggan 10).

(4) Plaintif mempunyai sebab yang kukuh untuk menuntut kerugian dan ganti rugi terhadap defendan atas tuntutan tort pencerobohan dan konversi. Sama ada defendan bersalah atas tindakan tort kontraktor bebas tersebut, prinsip undang-undang adalah majikan tidak patut disalahkan atas tindakan kecuaian atau ingkar kontraktor bebasnya kecuali jika majikan tidak menjalankan kewajipan berjaga-jaga dan melantik kontraktor yang terbaik dan kewajipan berjaga-jaga ke atas majikan itu tidak boleh 'didelegasikan'. Dalam rayuan serta merta yang dikemukakan, kedua ujian yang disebut tidak boleh diambil kira (lihat perenggan 11 dan 12).

(5) Di dalam sebarang kes, walaupun Bawan adalah agen defendan, defendan tidak boleh dipersalahkan terhadap tindakan Bawan kerana perjanjian pembalakan tersebut jelas menyatakan bahawa Bawan hanya boleh membalak di kawasan T/4214 sahaja. Oleh itu, tindakan Bawan adalah di luar skop tugasannya dan defendan tidak boleh dijadikan libel kerana tindakan ini di luar skop kerjanya (lihat perenggan 14).]

Notes

For cases on liability, see 3(2) *Mallal's Digest* (4th Edition 2003 reissue) paras 3801–3807
For cases on contract, see 3(2) *Mallal's Digest* (4th Edition 2003 reissue) paras 4642-4662
For cases on trespass to land, see 12 *Mallal's Digest* (4th Edition 2002 reissue) paras 1469-1472

Cases referred to

Datuk Bandar Dewan Bandaraya Kuala Lumpur v Ong Kok Peng & Anor [1993] 2 MLJ 234 (refd)
Employees Provident Fund Board v Bata Shoe Co (M) Ltd [1968] 1 MLJ 236 (refd)
Honeywill & Stein Ltd v Larkin Bros Ltd [1934] 1 KB 191 (refd)
MBB v Hong Sek Mee & Anor [1998] MLJU 74 (refd)

Legislation referred to

Evidence Act 1950 s 103

Dominic Lai (Dominic Lai & Co) for the plaintiff
Lee Bee Teck (Tang & Tang, Wahap & Ngumbang) for the defendant

Abdul Aziz JC:

[1] This an appeal by the appellant/plaintiff against the decision of the learned Sessions Court Judge given on 8 November 2001 dismissing the plaintiff claim. The facts of the case may be briefly stated as follows: Shin Yang Sdn Bhd (for brevity 'Shin Yang') is the main contractor for Sarawak

Timber Industry Development Corporation ('STIDC') for Timber Licence No T/0139 ('T/0139'). Under the Timber Extraction Agreement dated 6 May 1989 (at p 2 of the Agreed Bundle A – 'the Timber Extraction Agreement') between Shin Yang and the plaintiff, the plaintiff was employed at all material times as an independent contractor to extract timber in licenced area of T/0139.

[2] The defendant was the licensee for Forest Timber Licence No T/4214 (for brevity 'T/4214'). By a Logging Agreement dated 28 December 1990 ('the Logging Agreement' – at p 146 of the record of appeal), the defendant appointed Bawan Sdn Bhd ('Bawan') as an independent contractor to extract timber in licenced area T/4214.

[3] The plaintiff alleged that the defendant had on or about 16 March 1998 extracted and stole 619 logs (equivalent to 1637.28 m3) from the licenced area under T/0139. By a Summons dated 13 July 1998, the plaintiff commenced the action in the Sessions Court against the defendant to recover RM193,355.20 with interest as compensation for the loss of the 619 timber logs.

[4] On the evidence adduced, the following material facts are established:

a) That the plaintiff was an independent sub-contractor to Shin Yang Sdn Bhd, a company which had contracted with STIDC, the licence holder for Timber licence No.T/0139.

b) The defendant was a licence holder for Timber licence No T/4214. Under the licence, the defendant was allowed to fell and extract timber logs from the area identified under the licence.

c) Bawan was the defendant's independent contractor that felled and extracted timber logs for the defendant under licence T/4214.

d) Bawan in the course of its felling and extracting the timber logs in the area under licence T/4214, has encroached into the area known as Coupes 2H and 3H which were under licence T/0139 belonging to the SITDC.

e) Coupes 2H and 3H were closed coupes which means that no one is allowed to enter the area unless that person obtained a permit ('PEC') to enter the area from the Forests Department.

f) Bawan had cut and felled 619 pieces of timber logs illegally from the closed coupes of 2H & 3H.

g) Bawan had paid the compound of RM121,000 for the offence of illegal cutting and felling of the 619 pieces of timber logs.

h) Upon payment of the compound, the 619 pieces of log timber were released to Bawan and Bawan eventually sold the timber logs.

[5] There are two issues in this case. The first issue is whether the defendant is liable for the act of its independent contractor Bawan. The

second issue is whether the plaintiff, under the Timber Extraction Agreement has the right to sue.

[6] As to the first issue, the position of Bawan as an independent contractor to the defendant is quite obvious under the Logging Agreement. Clause l(i) of the Logging Agreement provides that the licensee, that is the defendant, shall engage the contractor, that is Bawan, to fell and extract merchantable timber logs from the forest concession area identified and marked in a map annexed to the Logging Agreement. Clause 1(ii) of the Logging Agreement then provides that the contractor shall be regarded as an independent contractor. Under clause 3 of the Logging Agreement, the contractor is responsible, at its own cost and expense, to supply, provide and maintain all labour, tools, equipments, fuels, machinery and materials for the performance of its obligation under the Logging Agreement. The contractor is also responsible under the Agreement to ensure compliance with the Forest Ordinance and Regulations and all other relevant laws pertaining to labour and workmen employed by the contractor for the purpose of carrying out its obligations under the Logging Agreement. Clauses 2(iv) and (vi) of the same Agreement require the contractor to indemnify the employer, that is the defendant, against all claims, legal proceedings and damages, fines and penalties suffered by the employer as a result of the act of the contractor under the Agreement. In return for the contractor obligations under the Logging Agreement, the contractor is paid a contract price of RM116.50 per cubic meter of merchantable timber logs felled, extracted and delivered to destinations specified by the defendant from time to time.

[7] It is trite law that the relationship of the parties under a contract is not determined by the label given to the document of contract; but by looking at the effect of the provisions of the contract. In *MBB v Hong Sek Mee* & *Anor* [1998] MLJU 74 (unreported) Nik Hashim J (as he then was) held that, in construction of a contract, although the court was not bound by labels affixed in it, the court had a duty to construe the contract as a whole to determine its true nature; and that the clear terms of the agreement must therefore be given effect to as parties are bound by the contract. In *Employees Provident Fund Board v Bata Shoe C (M) Ltd* [1968] 1 MLJ 236, the Federal Court ruled, at p 237, that, 'in construing a contract the governing principle is to ascertain the intention of the parties through the words they have used.'

[8] Still on the issue whether Bawan was an employee of the defendant or whether Bawan was an independent contractor, reference may be made to *Halsbury's Laws of England* Vol 25 (3rd Edn) p 498 where the following passage is found:

> To distinguish between an independent contractor and a servant, the test is whether or not the employer retains the power, not only of directing what work is to be done but also of controlling the manner of doing the work.

[9] In *Honeywill* & *Stein Ltd v Larkin Bros Ltd* [1934] 1 KB 191, Slesser LJ who delivered the judgment of the Court of Appeal, said at p 169 as follows:

A The determination whether the actual wrongdoer is a servant or agent on the one hand or an independent contractor on the other depends on whether or not the employer not only determines what is to be done, but retains the control of the actual performance, in which case the doer is a servant or agent; but if the employer, while prescribing the work to be done, leaves the manner of doing it to the control of the doer, the latter is an independent contractor.

B **[10]** Therefore the test to determine whether a person is an independent contractor or a servant is the degree of control the employer has over the person. It was submitted by the plaintiff's counsel that Bawan is only an independent contractor as regards the provision of labour and equipment for the purpose of the Logging Agreement; but Bawan is still accountable to the C defendant. In my view, accountability alone does not necessarily make Bawan an independent contractor. The true relationship between the defendant and Bawan must be determined by looking at the total effect of all the provisions in the contract that governs the relationship. Taking this approach, and applying the control test, I am of the view that the provisions of the Logging Agreement which I have alluded to above show that the relationship between D the defendant and Bawan is that of an employee and employer; not that of master and servant. Under the Logging Agreement, the defendant may be said to have the authority to direct Bawan as to what needs to be done. That is the cutting, felling and extraction of merchantable timber logs from licence area T/4212, and to deliver it to a point of collection as specified by the defendant. But the defendant in my view, upon consideration of the clauses E in the Logging Agreement that relate to the cutting, felling and extraction of the timber logs, has no control over the labour or the machinery or the manner to be employed by Bawan in carrying out that task. That makes Bawan an independent contractor. The other reason being that Bawan was employed by the defendant under the terms of the contract to deliver the F timber logs at a price. Failure on the part of Bawan to do so would attract certain sanctions under the Logging Agreement such as payment of compensation and indemnity for loss or damages. That being the case, does the defendant then become responsible for the act of Bawan in encroaching onto the plaintiff's licence area and illegally felling and extracting timber logs from the closed coupe of 2H and 3H? I do not think so.

G **[11]** For the purpose of determining the liability of the defendant for the act of its contractor Bawan, it is worth noting at this point that the facts of the case in the instant appeal show that the plaintiff grounded its claim for loss and damages against the defendant on the tort of trespass and conversion. I say so because it is not disputed that Bawan had encroached onto the closed H Coupe area of 2H and 3H. These Coupes were in the licence area of T/0139 which the plaintiff has the right to log. It is also not disputed that Bawan had cut, felled and extracted timber logs from the two coupes and had sold them. In the circumstances therefore, can the defendant be liable for the tortious act of its independent contractor Bawan? In *Datuk Bandar Dewan Bandaraya Kuala Lumpur v Ong Kok Peng & Anor* [1993] 2 MLJ 234, the Supreme I Court recognised the principle of law that an employer is not liable for the default or negligence of its independent contractor with certain exceptions. This is what the Court said at p 239 of the report:

While the rule that an employer of an independent contractor is not liable for the default or negligence of such contractor no doubt exists, there are exceptions.

[12] In the above case the Supreme Court discussed two of the exceptions. The first exception is where an employer has not exercised care in selecting a competent contractor. The second exception is a group of cases or situations when the duty to take care is said to be 'non-delegable'. However, on the facts of the case in this instant appeal, I am of the view that none of the two exceptions are applicable. But in the *Datuk Bandar* case above, the plaintiff successfully argued its case within the second exception and therefore the Court found Bandaraya liable to the plaintiff and the independent contractor liable to Bandaraya in indemnity.

[13] The evidence adduced before the Sessions Court, and as found in the record of appeal, does not show that the defendant had benefitted from the illegal act of Bawan. Though there is evidence of removal of timber logs being adduced, this is not conclusive to show that what was removed were the actual 619 timber logs that were cut and felled by Bawan from the licence area of T/0139. On the contrary, the evidence of DW4 seems to indicate otherwise. DW4 was the Director of Bawan. He admitted that Bawan did cut and extract timber from closed Coupes 2H and 3H in T/0139. But he said he had the PEC to enter and work the two Coupes. DW4 also said that Bawan did pay the compound imposed by the Forestry Department for the 619 timber logs and upon payment the timber logs were released to Bawan. It can be seen from the record of appeal that under re-examination by the plaintiff/appellant's counsel, DW4 admitted that the 619 logs were subsequently sold by Power Ground Industry Sdn Bhd owned by 'us', by which expression I think it means owned by Bawan or its Directors.

[14] Even if, for a moment, it is said that Bawan is the agent of the defendant, the defendant cannot be made liable for the act of Bawan in cutting, felling and extracting timber logs from the closed coupe area of 2H and 3H which were within the licence area T/0139. Clause 3(1) of the Logging Agreement between the defendant and Bawan clearly provides that the contractor, that is Bawan, shall fell and extract timber only from the forest area under licence T/4214 in accordance with the working plan approved by the Forest Department or direction given by the licensee, the defendant from time to time. There is no evidence to show that the defendant had ever authorised Bawan to fell and extract timber logs from coupe 2H and 3H in the licence area of T/0139. Thus, such an act by Bawan is obviously outside the scope of its employment. Bawan is only authorised to cut and fell timber within the concession area of T/4214 and no other. Therefore the defendant cannot be made liable for the act of Bawan done outside the scope of its employment.

[15] Therefore on the first issue, and for the foregoing reasons, I conclude that the defendant is not liable for the act of its independent contractor, Bawan. Hence the plaintiff's claim against the defendant fails.

[16] As to the second issue I think it is really not necessary for me to discuss the issue at great length since I have already decided the first issue against the appellant/plaintiff.

[17] However, for the sake of completeness, I express the following views. The plaintiff situation vis-a-vis Shin Liang is in similar position as that of Bawan. Under the Timber Extraction Agreement dated 6 May 1989 (at pp 107 to 119 of the record of appeal) the appellant/plaintiff was engaged as an independent subcontractor to Shin Yang to extract timber from the licenced area under T/0139. Clause l(i) of the Agreement provides that the appellant/plaintiff is the sole and exclusive contractor and clause l(iv) of the same Agreement states that the appellant/plaintiff's engagement as a sole and exclusive independent contractor to work the licenced area was for a period of ten years.

[18] On this issue, counsel for the respondent submits, at p 14 of his written submissions, the appellant's reliance on clauses 2(h), 3(1) (f) and (g) and 6(1) of the Timber Extraction Agreement is not enough to show that the appellant/plaintiff has a right to sue for the loss of the 619 timber logs. Counsel for the respondent further submitted that the appellant/plaintiff must prove the fact that it has a right to sue because it is a positive averment by the appellant/plaintiff; therefore under s 103 of the Evidence Act 1950, he who asserts a fact must prove that fact. Counsel for the respondent then submitted that the appellant/plaintiff had not shown any proof of a power of attorney given to him by the licence holder that STIDC.

[19] In my view it is not necessary for the appellant/plaintiff to produce a power of attorney from the licence holder in order to show that he has the right to sue for the loss of the 619 pieces of timber logs. Of course if the appellant/plaintiff can do that it would be a lot easier for the appellant/plaintiff. Even without the proof of a power of attorney, I think the question whether the appellant/plaintiff has a capacity or right to sue for the loss of the 619 timber logs may be determined within the four corners of the Timber Extraction Agreement.

[20] Clause 2(h) of the Timber Extraction Agreement sets out the contractual obligations of the appellant/plaintiff to keep Shin Yang or the licensee (ie STIDC) indemnified against all loss, fines, penalties, damages and other liabilities from the acts and omissions of the appellant/plaintiff or their servants. Clause 3(l)(g) and clause 6(1) require the appellant/plaintiff to take adequate precautions to prevent loss of timber from the licenced area within which it was given the authority to work under the Timber Extraction Agreement. If there is any loss of timber logs, the appellant/plaintiff would be responsible for it and would have to compensate Shin Yang or the licencee for the loss. This is quite obvious from the reading of clauses 6(ii) and (iii) of the Agreement. Then, clause 11 of the Agreement stipulates that the appellant/plaintiff shall be responsible for the payment of any tax on the profits arising from the logging operations and also is responsible for payment of all timber royalties, cess and other dues and levies payable to the competent authorities for the extraction and removal of the timber logs from the licenced area. For all the obligations of the appellant/plaintiff as I have summarily stated above, and all other obligations under the Timber Extraction Agreement, the appellant/plaintiff was paid a contract price as provided in clause 7 of the Agreement.

[21] What is the cumulative effect of all the clauses of the Agreement that I have alluded to above. To me it seems that the appellant/plaintiff is required under the Agreement to spend from his own pocket quite a sum of money before he can get paid for the timber logs delivered pursuant to clause 7 of the Agreement. Any loss of the timber logs from the licenced area would certainly affect the appellant/plaintiff's pocket directly. This factor I think is the single most important factor that the appellant/plaintiff ought to be allowed to take all reasonable steps to prevent the loss of the timber logs or to recover the loss from whomsoever causes it. That includes mounting a legal action in a court of competent jurisdiction to recover the loss. In short, the plaintiff has an interest – a pecuniary interest – in the Timber Extraction Agreement with Shin Yang. This interest gives the plaintiff the locus standi to sue.

[22] For the above reasons, I hold that the appellant/plaintiff has a right to sue under the Timber Extraction Agreement.

[23] Be that as it may, since the appellant/plaintiff fails to show that the respondent is liable for the act of Bawan, the respondent independent contractor under the Logging Agreement, the appellant/plaintiff fails in this appeal. Accordingly this appeal is dismissed with costs to the respondent.

Plaintiff's appeal dismissed.

Reported by Lim Lee Na